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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 74-56

EDWARD L. CAREY, *Petitioner*

v.

C. W. DAVIS, PAUL R. DEAN AND HARRY HUGE, TRUSTEES, UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950 AND UNITED MINE WORKERS OF AMERICA, *Respondents*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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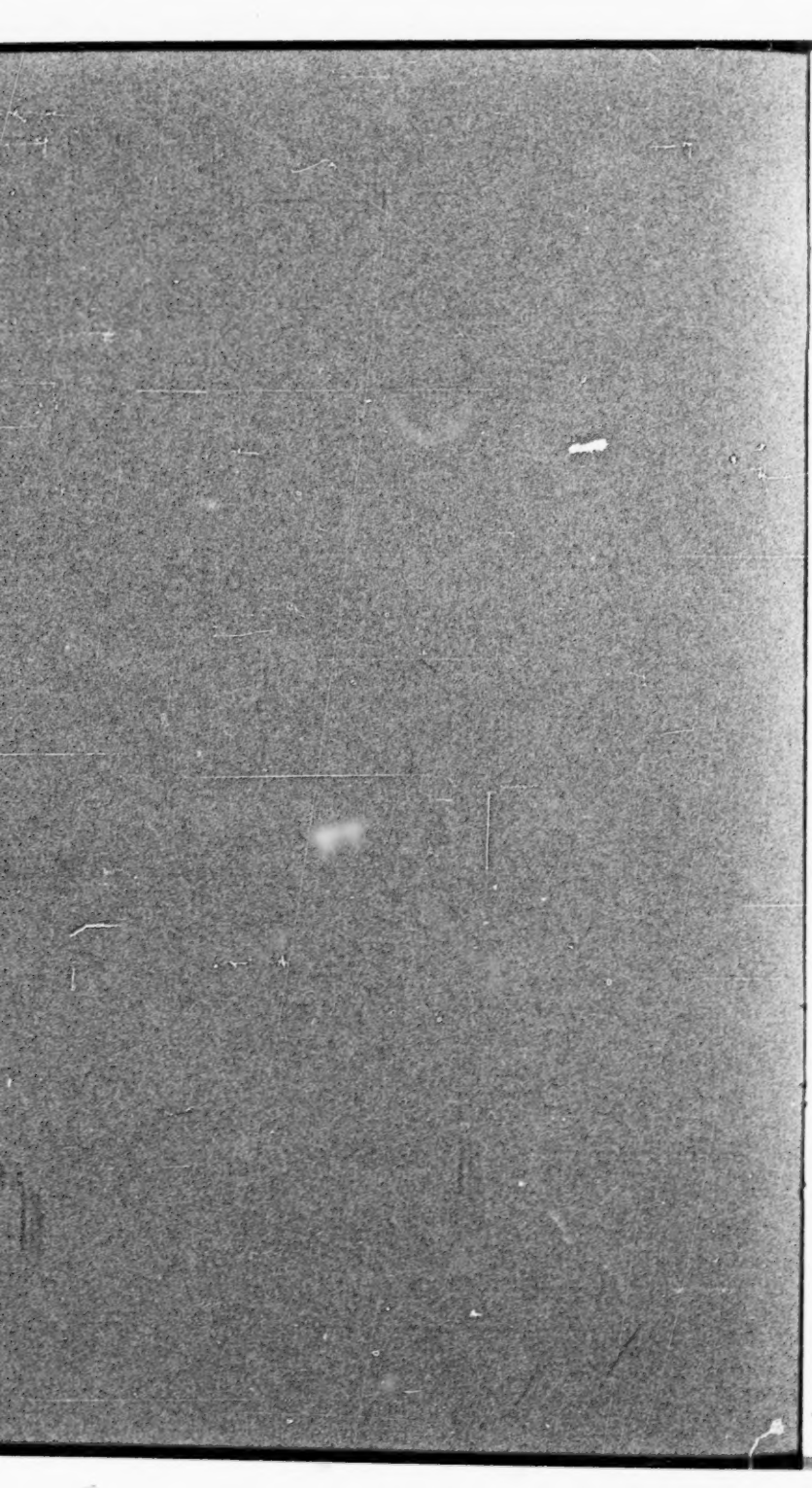

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Respondent, United Mine Workers of America, opposes the Petition for Writ of Certiorari for the reasons presented herein.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Was the Court of Appeals correct in deciding that the District Court did not abuse its discretion when it removed petitioner from his position as trustee of the United Mine Workers of America Welfare and Retirement Fund of 1950 after a finding that close collaboration was required between the United Mine Workers

of America and its trustee and that the petitioner harbored intense antagonism towards the Union's present management?

STATEMENT OF THE CASE

Respondent United Mine Workers of America ("UMWA") relies on the statement of facts in Judge Hart's opinion for the Court of Appeals. (Pet. App.).

REASONS FOR DENYING THE WRIT

This matter involves the removal of Petitioner from his position as trustee of the United Mine Workers of America Welfare and Retirement Fund of 1950, a collectively bargained labor-management welfare and pension fund established pursuant to Section 302 of the Labor-Management Relations Act, 29 U.S.C. 186, upon findings that the Fund's administration depends upon close collaboration between the Union and its trustee, that Petitioner had placed himself in a position of irreconcilable conflict with the Union, and that he harbored intense antagonism toward the Union's present management.

1. In seeking to invoke certiorari review, Petitioner fails even to hint at any conflict between the Court of Appeals decision and any other federal decision, let alone one of an appellate court. Instead, he asserts that this case somehow presents a federal question of such special importance that this Court's attention is warranted, despite the lack of decisional conflict. To this end, the Petition, in its formulation of the question presented, blatantly distorts the Court of Appeals' holding. The Court of Appeals clearly stated that the trustees' fiduciary duty is owed, not to their respective settlors, but to the beneficiaries and the

Fund (Pet. App. 8a). Without suggesting anything of the sort which Petitioner seeks to impute, the Court of Appeals recognized that, as contemplated by Section 302 itself, union and employer trustees do represent the special views and interests of the respective parties appointing them in the Fund's administration and that effective administration of such a Fund depends upon close cooperation between the Union and its trustee.

2. Petitioner's real objection is to the finding that he had placed himself in a position of irreconcilable conflict precluding collaboration between himself and the Union in matters affecting the Fund. This finding is supported by record evidence and was accepted by the Court of Appeals, and is not a proper matter for this Court to review. As this Court said in *United States* v. *Johnston,* 268 U.S. 220, 227 (1925), it does "not grant a certiorari to review evidence and discuss specific facts." Petitioner's invitation that the Court sift again through the factual circumstances of his removal plainly ought to be rejected.

3. Also without merit is Petitioner's contention that his removal as a trustee was not a proper matter for exercise of judicial discretion. It is settled trust law that a court may order a trustee removed and that the propriety of the removal is solely within the discretion of the trial judge.

> "A court which has supervision over the administration of trusts has power to remove a trustee for proper cause. Unless the grounds for removal are stated in a statute, and unless the grounds so stated are exclusive, the matter is one for the exercise of a sound discretion by the Court."

II Scott, *Trusts*, § 107 at 840; *accord*, Bogert, *Trusts and Trustees*, § 519 at 326-27; *Restatement of Trusts 2d*, § 107; *May* v. *May*, 167 U.S. 310, 320-21 (1897); *McPherson* v. *Cox*, 96 U.S. 404, 419 (1878). In effect, Petitioner's claim that his removal was not a proper exercise of judicial discretion is merely another way of asking this Court to reweigh the facts, which it plainly should not do.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

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